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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

CASE NO. 20-CV-05640-YGR

**APPLE INC.'S TENTATIVE REVISED
TRIAL WITNESS LIST**

The Honorable Yvonne Gonzalez Rogers

Trial: May 3, 2021

1 Pursuant to Pretrial Order No. 1 (ECF No. 371) and the Court’s Standing Order re: Pretrial
2 Instructions in Civil Cases, Defendant and Counterclaimant Apple Inc. (“Apple”) serves its
3 Tentative Revised Trial Witness List, other than for impeachment or rebuttal, reserving its rights
4 to supplement or amend its list for good cause or in response to Epic Games, Inc.’s (“Epic”)
5 witness list and/or other pre-trial disclosures. Apple also reserves the right to substitute deposition
6 designations for live testimony, and vice versa, including based on the availability or non-
7 availability of any witness to appear at trial.

8
9 DATE: April 14, 2021

GIBSON DUNN & CRUTCHER LLP

10 /s/ Richard J. Doren
11 Richard J. Doren

12 *Attorney for Defendant and Counterclaimant*
13 *Apple Inc.*

APPLE WITNESS LIST

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
<u>Apple Witnesses</u>					
Tim Cook, Chief Executive Officer* ¹	Apple's corporate values; development and launch of the App Store; competition faced by Apple.	1 hour	1 hour	10 minutes	Live, in person
Craig Federighi, Senior Vice President, Software Engineering*	iOS operating system; competition faced by Apple; Apple's investment and efforts to combat malware, spyware, and other issues relating to app security and iOS device user protection.	2 hours	1 hour	10 minutes	Live, in person
Matt Fischer, Vice President, App Store	Marketing of apps available in the App Store; competitors and competition in the sale of apps and the different app marketplaces; Apple's business relationships with app developers.	See Epic's list for estimated lengths of examinations.			Live, in person

¹ Primary witnesses who are not included only as a precautionary measure are denoted with an asterisk.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Eric Gray, Director, Commerce & Payments*	Design and operation of Apple's payment processing policies and practices.	1 hour	15 minutes	5 minutes	Live, in person
Mark Grimm, Game Development Manager	The tools, services, and benefits that Apple provides to developers, including services and support Apple provided to Epic; Apple's relationship with Epic; Epic's breaches of its agreements with Apple and Epic's other misconduct.	1 hour	30 minutes	5 minutes	Live, in person
Trystan Kosmyinka, Senior Director, Marketing*	App Store policies and guidelines; Apple's app review and curation process and procedures; Apple's investment in efforts to protect iOS device users' safety and privacy.	See Epic's list for estimated lengths of examinations.			Live, in person.
Phil Schiller, Apple Fellow*	Development and launch of the App Store; App Store policies and guidelines; the App Store business model; the App Store commission; app distribution; iOS operating system; competition faced by Apple;	6 hours	4 hours	1 hour	Live, in person

APPLE INC.'S TENTATIVE REVISED TRIAL WITNESS LIST

Case No. 4:20-cv-05640-YGR-TSH

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	design, development, launch, and marketing of the iPhone.				
Michael Schmid, Head of Game Business* Development, App Store	The tools, services, and benefits that Apple provides to developers, including to Epic; Apple's relationship with Epic, Epic's breaches of its agreements with Apple, and Epic's other misconduct.	See Epic's list for estimated lengths of examinations.			Live, in person.
C.K. Haun, Senior Director, Developer Technical Services	App Store policies and guidelines; the App Store business model; Apple's policies relating to App Store commissions and developer price selection; technical services Apple provides to app developers.	15 minutes		NA	Deposition Designation
Document Custodian	Admission of business records and other documents in Apple's possession, as necessary	5 minutes			Live, in person or may request leave to appear remotely.

APPLE INC.'S TENTATIVE REVISED TRIAL WITNESS LIST
Case No. 4:20-cv-05640-YGR-TSH

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
<u>Epic Witnesses</u>					
Steve Allison, General Manager, Epic Games Store	The Epic Games Store business model and financial projections; the Epic Games Store's revenue split; the Epic Games Store's market share.	See Epic's list for estimated lengths of examinations.			Live, in person, or by deposition designation.
Andrew Grant, Engineering Fellow	Enforcement of platform rules; <i>Fortnite</i> anti-cheat measures; the importance to Apple's brand of protecting user privacy and security; Epic's use of Apple-provided tools and services; Epic's interest in workarounds to undercut Apple's 30% commission; Epic's efforts to subvert app review; Epic's campaign against app stores.	See Epic's list for estimated lengths of examinations.			Live, in person, or by deposition designation.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Joseph Kreiner, Vice President, Business Development	Benefits of cross-platform play; Epic's relationships with console manufacturers, including contractual terms, commissions paid by Epic, and payment processing terms; fraud on the Epic Games Store.	<i>See Epic's list for estimated lengths of examinations.</i>			Live or by deposition designation. If appearing live, Mr. Kreiner may request leave to appear remotely.
Thomas Ko, Senior Director, Head of Online Business Strategy and Operations	Epic's relationship with Samsung, including Epic's contracts with Samsung, commissions paid to Samsung, and communications with Samsung; Epic's campaign against app stores.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person, or by deposition designation.
Mark Rein, Vice President, Business Development	The Epic Games Store business model and commission; benefits of Apple marketing and other support provided to Epic; Epic's plans and practices concerning distribution through iOS, competing platforms, and alternative channels; Epic's campaign against app stores.	15 minutes	15 minutes	10 minutes	Live, in person, or by deposition designation.

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Tim Sweeney, Chief Executive Officer*	Epic's business model, operations, and strategy; Epic's financial performance; Epic's dealings with Apple and competing platforms, including commissions paid; Epic Games Store profitability; Epic's relationship with Samsung, including Epic's contracts with Samsung, commissions paid to Samsung, and communications with Samsung; Epic's campaign against app stores.	See Epic's list for estimated lengths of examinations.			Live, in person.

<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Daniel Vogel, Chief Operating Officer	Epic's exploration of sideloading on iOS and Android; Epic's launch of <i>Fortnite</i> outside of the Google Play Store; security of <i>Fortnite</i> and the Epic Games Store, including the Xsolla payment processor; concerns over cross-platform arbitrage of "V-bucks" purchases; Epic's attempts to avoid Apple's App Store review process; Epic's campaign against app stores.	15 minutes	15 minutes	10 minutes	Live, in person, or by deposition designation.
Matthew Weissinger, Vice President, Marketing	Epic's pricing and marketing activities, including as to <i>Fortnite</i> ; <i>Fortnite</i> 's profit margin; <i>Fortnite</i> 's weaknesses on mobile systems relative to game consoles; Epic's campaign against app stores.	See Epic's list for estimated lengths of examinations.			Live, in person, or by deposition designation.
Document Custodian	Admission of business records and other documents in Epic's possession, as necessary	5 minutes			Live, in person or may request leave to appear remotely.

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Joseph Babcock, Former Chief Financial Officer	Epic's financial performance; Epic's business model and strategy; Epic's dealings with Apple and competing platforms, including commissions paid; Epic Games Store profitability.	15 minutes	10 minutes	N/A	Deposition Designation
Marc Hutcheson, Marketing Manager (former Epic)	Apple's marketing support of Epic and <i>Fortnite</i> ; Epic's violations of agreements with Apple and related rules; the Epic Games Store's operations and customer acquisition strategies.	15 minutes	10 minutes	N/A	Deposition Designation
Haseeb Malik, Marketing Manager (former Epic)	Tools, services, and benefits that Apple provided to Epic; platforms on which Epic makes its games available; Epic's campaign against app stores.	15 minutes	10 minutes	N/A	Deposition Designation
David Nikdel, Lead, Online Gameplay Systems	Engineering and technology benefits received from Apple; quality of non-iOS platforms; Epic's direct payment hotfix.	15 minutes	5 minutes	N/A	Deposition Designation

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Nick Penwarden, Vice President, Engineering	The Unreal Engine business model; iOS and Android proprietary software and tools; engineering support from Apple; cross-platform play.	15 minutes	5 minutes	N/A	Deposition Designation
Alec Shobin, Senior Marketing Manager	Marketing for mobile games; the App Store review process; Epic's campaign against app stores.	15 minutes	10 minutes	N/A	Deposition Designation
<u>Third Party Witnesses</u>					
Vivek Sharma, Vice President, Gaming, Facebook, Inc.	TBD after Apple deposes this individual.	See Epic's list for estimated lengths of examinations.			Live, in person.
Lori Wright, Vice President, Xbox Business Development, Microsoft Corporation	TBD after Apple deposes this individual.	See Epic's list for estimated lengths of examinations.			Live, in person.
Benjamin Simon, Founder and Chief Executive Officer, Yoga Buddhi Co.	TBD after Apple deposes this individual.	See Epic's list for estimated lengths of examinations.			Live, in person.

APPLE INC.'S TENTATIVE REVISED TRIAL WITNESS LIST

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<u>Witness</u>	<u>Apple's Brief Statement of Substance of Testimony</u>	<u>Estimated Length of Direct Examination</u>	<u>Estimated Length of Cross-Examination</u>	<u>Estimated Length of Re-Direct Examination</u>	<u>Appearance</u>
Shelley Gould, President, Co-Founder, Neuro-Fin d/b/a SmartStops	TBD after Apple deposes this individual.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.
Aashish Patel, Nvidia Corporation	Tools, services, and support that Apple provided to Nvidia; distribution on competitor platforms and through alternative channels; communications with Apple; compliance with Apple's App Review Guidelines; Nvidia's affiliation with Epic.	<i>See Epic's list for estimated lengths of examinations.</i>			Live, in person.
Document Custodian, Alphabet Inc.	Admission of business records and other documents in Alphabet's possession, as necessary	15 minutes			Live, in person
Document Custodian, App Annie, Inc.	Admission of business records and other documents in App Annie's possession, as necessary	15 minutes			Live, in person

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Document Custodian, Roblox Corporation	Admission of business records and other documents in Roblox's possession, as necessary	15 minutes			Live, in person
Adrian Ong, Senior Vice President of Operations, Match Group	Tools, services, and support that Apple provided to Match Group; distribution on competitor platforms and through alternative channels; communications with Apple; compliance with Apple's App Review Guidelines; Match's affiliation with Epic.	15 minutes	5 minutes	N/A	Deposition Designation
Scott Forstall, former Senior Vice President, iOS Software	Differences between mobile devices and PCs; security and privacy considerations for mobile devices; historical App Store policies and practices.	30 minutes	5 minutes	N/A	Deposition Designation

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Ron Okamoto, former Vice President, Worldwide Developer Relations	App Store policies and guidelines; the App Store business model; resources, tools, software, content, and services, made available to app developers, including pursuant to the Apple Developer Agreement and Program License Agreement; app development for macOS; transformation of the application software business.	15 minutes	5 minutes	N/A	Deposition Designation
Phillip Shoemaker, former Technology Director, App Review	App Store policies and guidelines; Apple's app review and curation process and procedures; Apple's investment in efforts to protect iOS device users' safety and privacy.	15 minutes	5 minutes	N/A	Deposition Designation
<u>Apple Expert Witnesses</u>					
Richard Schmalensee	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	3 hours and 30 minutes	30 minutes	Live, in person

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Lorin Hitt	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	3 hours and 30 minutes	30 minutes	Live, in person
Francine LaFontaine	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	2 hours and 30 minutes	20 minutes	Intends to appear live and in person, but may request leave to appear remotely.
Daniel Rubinfeld	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	2 hours	20 minutes	Live, in person
James Malackowski	<i>See</i> expert disclosures served February 16, 2021 and March 15, 2021	1 hour (with written direct)	1 hour and 30 minutes	20 minutes	Live, in person

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Aviel Rubin	<i>See expert disclosures served February 16, 2021 and March 15, 2021</i>	1 hour (with written direct)	2 hours and 30 minutes	20 minutes	Live, in person
Dominique Hanssens	<i>See expert disclosures served February 16, 2021 and March 15, 2021</i>	1 hour (with written direct)	1 hour	20 minutes	Live, in person